

# Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:ITA:B02  
PLR-101752-15

Date:  
July 16, 2015

TY:

## Legend

Taxpayers	=
Year 1	=
Year 2	=
Year 3	=
A	=
B	=
C	=

D	=
E	=

Dear :

This is in response to your letter dated A. In your letter, you requested an extension of time to make an election pursuant to § 165(i) of the Internal Revenue Code to report on your Year 1 amended income tax return a disaster loss sustained in Year 2. The request is based on §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

## FACTS

Taxpayers represent the following facts:

In October 2012, Taxpayers' home and surrounding property were damaged by Hurricane Sandy. In October 2012, the President of the United States determined that

the area in which Taxpayers' property is located warranted assistance by the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

Taxpayers consulted with their tax advisor to prepare their tax return for the Year 2 taxable year. On B, Taxpayers filed their federal income tax return for Year 2 after several discussions with their tax advisor. C. Taxpayers' tax advisor stated in his affidavit that he was not aware of the § 165(i) election to deduct a disaster loss in the immediately preceding year and therefore did not advise them they could file an election to claim the loss in the Year 1 taxable year.

In D, Taxpayers selected a different tax advisor to prepare and file their federal income tax return for Year 3. At that time, Taxpayers claimed they had more information available about the amount of the loss attributable to the Year 2 disaster, and this was also discussed with the tax advisor. In E. This tax advisor also advised Taxpayers about the election to claim a disaster loss in the taxable year immediately preceding the year of the disaster under § 165(i). Prior to their discussions with this tax advisor, Taxpayers were not aware of the § 165(i) election or the necessity to make the election by October 15, 2013. Consequently it was determined to request relief to late file the election, as the filing of a late election is within the discretion of the Commissioner under §§ 301.9100-1 and 301.9100-3.

#### LAW

Section 165(a) allows a deduction for any loss sustained during the taxable year and not compensated for by insurance or otherwise.

Section 165(i)(1) provides that a taxpayer may elect to take into account any loss occurring in a disaster area and attributable to a federally declared disaster in the taxable year immediately preceding the taxable year in which the disaster occurred.

Section 165(i)(2) provides that if an election is made under this subsection, the casualty resulting in the loss shall be treated for purposes of this title as having occurred in the taxable year for which the deduction is claimed.

Section 1.165-11(e) of the Income Tax Regulations provides that the election to claim a deduction with respect to a disaster loss must be made on or before the later of (1) the due date for filing the income tax return (determined without regard to any extension of time granted the taxpayer for filing such return) for the taxable year in which the disaster actually occurred, or (2) the due date for filing the income tax return (determined with regard to any extension of time granted the taxpayer for filing such return) for the taxable year immediately preceding the taxable year in which the disaster actually occurred.

Notice 2013-21, 2013-15 I.R.B. 903, postponed to October 15, 2013, the deadline to make an election under § 165(i) to deduct in the preceding taxable year losses attributable to Hurricane Sandy sustained in a federally declared disaster area in

Connecticut, Delaware, District of Columbia, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, or West Virginia resulting from Hurricane Sandy.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make certain regulatory elections. Section 301.9100-1(b) defines a "regulatory election" as an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice or announcement published in the Internal Revenue Bulletin.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election. Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic changes covered under § 301.9100-2) will be granted when the taxpayer provides evidence (including affidavits described in the regulations) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides that a taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer --

- (i) requests relief before the failure to make the regulatory election is discovered by the Service;

- (ii) inadvertently failed to make the election because of intervening events beyond the taxpayer's control;

- (iii) failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election;

- (iv) reasonably relied on the written advice of the Service; or

- (v) reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make the election.

Section 301.9100-3(b)(3) provides that a taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer --

- (i) seeks to alter a return position for which an accuracy-related penalty could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires a regulatory election for which relief is requested

- (ii) was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or

(iii) uses hindsight in requesting relief. If specific facts have changed since the due date for making the election that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief.

Section 301.9100-3(c)(1) provides that the Commissioner will grant a reasonable extension of time only when the interests of the Government will not be prejudiced by the granting of relief. The interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made. The interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

#### ANALYSIS

Taxpayers' election is a regulatory election, as defined under § 301.9100-1(b), because the due date of the election is prescribed in the Income Tax Regulations under § 1.165-11(e). The Commissioner has the authority under §§ 301.9100-1 and 301.9100-3 to grant an extension of time to file a late regulatory election.

The information submitted and representations made by Taxpayers and their tax professionals establish that Taxpayers acted reasonably and in good faith in respect of this matter. Furthermore, based on the facts of the case provided, granting an extension will not prejudice the interests of the Government within the meaning of § 301.9100-3(c)(1).

#### RULING

Based upon our analysis of the facts as represented, Taxpayers acted reasonably and in good faith, and granting relief will not prejudice the interests of the Government. Therefore, the requirements of §§ 301.9100-1 and 301.9100-3 have been met. Taxpayers are granted an extension of 45 days from the date of this letter ruling to permit them to make the election available under § 165(i) with respect to the described Year 2 disaster loss.

#### CAVEATS

This ruling is limited to the timing for making the election under § 165(i). Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. No opinion is expressed as to the federal tax treatment of the subject loss transaction under any other provisions of the Internal Revenue Code and the Treasury Regulations that may be applicable or under any other general principles of federal income taxation. This letter ruling is only applicable to matters under our jurisdiction. See Rev. Proc. 2015-1, 2015-1 I.R.B. 1, 18, Section 1. No opinion is expressed as to the tax treatment of any conditions existing at the time of, or effects resulting from, the transaction that are not specifically covered by the above ruling.

As a condition of this ruling, Taxpayers agree to amend their tax return for Year 2 to remove the disaster loss claimed in that year and treat pending return refunds for their Year 2 tax year consistent with the relief granted in this ruling. If Taxpayers fail to do so, this ruling is null and void.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the Taxpayers and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Enclosed is a copy of this letter ruling showing the deletions proposed to be made in the letter when it is disclosed under § 6110.

Sincerely,

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NORMA C. ROTUNNO  
Senior Technician Reviewer, Branch 2  
Office of the Associate Chief Counsel  
(Income Tax & Accounting)

cc: